Braille Monitor

JULY/AUGUST, 1979

VOICE OF THE NATIONAL FEDERATION OF THE BLIND

THE BRAILLE MONITOR

PUBLICATION OF THE
NATIONAL FEDERATION OF THE BLIND

JULY-AUGUST 1979

CONTENTS

THE BRAILLE MONITOR

PUBLISHED MONTHLY IN INKPRINT, BRAILLE, AND ON TALKING-BOOK DISCS BY

THE NATIONAL FEDERATION OF THE BLIND

KENNETH JERNIGAN, *President*

NATIONAL OFFICE

1800 JOHNSON STREET
BALTIMORE, MARYLAND 21230

WASHINGTON OFFICE

1346 CONNECTICUT AVENUE, NW., SUITE 212
WASHINGTON, D.C. 20036
(202) 785-2974

LETTERS FOR THE PRESIDENT, ADDRESS CHANGES, SUBSCRIPTION REQUESTS, AND ORDERS FOR NFB LITERATURE SHOULD BE SENT TO THE NATIONAL OFFICE.

ARTICLES FOR THE MONITOR AND LETTERS TO THE EDITOR SHOULD BE SENT TO THE WASHINGTON OFFICE.

* * *

MONITOR SUBSCRIPTIONS COST THE FEDERATION ABOUT FIFTEEN DOLLARS PER YEAR. MEMBERS ARE INVITED, AND NON-MEMBERS ARE REQUESTED, TO COVER THE SUBSCRIPTION COST. DUE TO ITS HIGH COST, BRAILLE IS AVAILABLE ONLY TO THE DEAF-BLIND AND THOSE WITH A SIMILARLY COMPELLING NEED FOR THAT MEDIUM. DONATIONS AND SUBSCRIPTION PAYMENTS SHOULD BE MADE PAYABLE TO NATIONAL FEDERATION OF THE BLIND AND SENT TO:

RICHARD EDLUND, *Treasurer*
NATIONAL FEDERATION OF THE BLIND
BOX 11185
KANSAS CITY, KANSAS 66111

* * *

If you or a friend would like to remember the National Federation of the Blind in your will, you can do so by employing the following language:

"I give, devise, and bequeath unto National Federation of the Blind, a District of Columbia nonprofit corporation, the sum of $___ (or "___ percent of my net estate" or "the following stocks and bonds: ___") to be used for its worthy purposes on behalf of blind persons."

If your wishes are more complex, you may have your attorney communicate with the National Office for other suggested forms.

* * *

THE NATIONAL FEDERATION OF THE BLIND IS NOT AN ORGANIZATION SPEAKING FOR THE BLIND—IT IS THE BLIND SPEAKING FOR THEMSELVES.

ISSN 0006-8829

OPEN LETTER TO FEDERATIONISTS

by DON McCONNELL

In early April, as many of you will have heard by now, I resigned my position as editor of the *Braille Monitor.* A few days later I moved back to California to take a job in the retail computer industry. I say "moved *back* to California" because this was the real heart of the matter.

Two years ago, when Dr. Jernigan and I were discussing the possibility of my leaving the San Francisco Bay Area (where I had spent nearly seven years in the Federation's Berkeley Office) to come to Des Moines or Washington, D.C., to edit the *Monitor,* I said that I had some doubt whether I could satisfactorily separate myself from the Bay Area—its climate and its lifestyle as well as the family and friends I had there. But the excitement and opportunities offered by the job of *Monitor* editor were enough to persuade me to try.

What followed were the two most eventful and dramatic years of my life as well as the most rewarding. In Des Moines and then in Washington I did find new friends to value—most of them in the movement and not all of them by any means in just those two cities. And there was no lack of work that provided real chances for creativity and usefulness.

But for the 2½ years I have been away from the Bay Area it has never been out of my mind. My brother, who for some time has been trying to persuade me to come back, found me a job with the company that employs him. It is a job with real responsibility and a bright future. I have been back in California for two weeks as I write this; and I am content to be here.

Still, it was not easy to leave a job that, in one form or another, continued for nearly ten years—or virtually all of my working life so far. I hope very much to keep the friendships I have in the NFB and to continue to be active in the movement; but I have to recognize that my involvement in the daily excitement of the Federation at the national level is over. The last two years in particular have produced peak experiences of the sort that usually come rarely in a lifetime. I will treasure these and miss them.

As I reflect on my years working for the NFB, a number of characteristics of the organization strike me. The Federation has many faces. If you visit local chapters, it can appear to be an organization of bake sales and committee reports. During the social times at conventions, it is a huge and friendly family. But when the large core of active Federation leaders go into action, the striking feature of the NFB is its cohesiveness and the ability of Federationists to act as a team. Two examples in particular come to mind: the White House Conference on Handicapped Individuals and the FAA demonstration last July. During the ill-starred White House Conference, a group of about three dozen Federationists completely out-maneuvered the Conference staff—expensive consultants and all—and organized a coalition of handicapped consumers that all but took over the Conference. At last July's convention, with fewer than 48 hours' notice, 1,000 Federationists were on the street in front of the Federal Aviation Administration. Even though the day between the decision to demonstrate and the demonstration itself was a national holiday, the pickets carried printed picket signs and had even had box lunches on the buses coming over from Baltimore. And we were met in Washington by a massive turnout of the Washington press corps.

After both of these occasions, we were accused of having planned our action weeks in advance. The White House Con-

ference staff told the press that it was obvious we had come to Washington all prepared to disrupt the Conference, and they implied we had acted in bad faith. The same complaint came from the FAA. In neither case was it true. They just couldn't believe an organization (and one of blind people at that) could act with such unity and effectiveness.

I have one other reflection on my experience with the Federation, and it concerns a quality of our activity that explains all the rest. It has to do with the kind of people who are in the movement. There are plenty of blind persons who for one reason or another choose not to be part of the Federation. But it is my experience that the best blind people do belong. People call the NFB just one more special interest group, but there is an important difference. Despite the tangible gains we have made for the blind—the liberalization of Social Security rules, for example—the people who benefit are in general not those who put themselves on the line. The blind persons who institute civil rights lawsuits know in advance that whatever the outcome, they will personally bear enormous burdens with little in the way of reward. But they know that the legal principles they establish will help all those who come after. The blind who jeopardize their jobs by demonstrating in front of a repressive lighthouse are in general not the lighthouse employees who will benefit from the action. Many of the most active Federationists have already made it; they could isolate themselves and leave their fellow blind to do the best they can. But they don't do this. Federationists realize that, however it may look, they did not make it on their own; and they acknowledge the responsibility this puts on them. This widespread acknowledgement of responsibility and the obligation to act on it no matter what the personal consequences makes the National Federation of the Blind almost unique in the world. It is what, for me, has made it an honor and a privilege to have been given a chance to have a part in it. Without question the Federation has changed my life and in a way that I will always be grateful for.

MARCH ON WASHINGTON 1979

by JAMES GASHEL

Since 1973 when Federationists first turned out in numbers to visit the members of the Congress in their Washington offices, we have developed and refined the technique and come to refer to these gatherings as "Marches on Washington." The issues have varied from time to time; the first Marches dealt almost exclusively with NAC and our effort to block further federal funding of this disgraceful AFB power grab maneuver, but by 1976 our voices had been heard sufficiently, and no more federal money went to NAC.

This done, the 1977 March focused on improving services to blind persons through legislation aimed at authorizing special federal funding to separate agencies for the blind which offer comprehensive rehabilitation and related services. We also gathered support for our Disability Insurance bill as the 95th Congress settled in to consider Social Security legislation. Again, the effort and the participation of nearly 200 Federationists who came from across the country at personal expense proved worthwhile, for during the 95th Congress we made progress by securing new authority for specialized services for the blind through the Rehabilitation Act, and we succeeded in obtaining an increase in the

amount which blind Social Security Disability Insurance beneficiaries can earn before losing benefits. Above all, of course, we also renewed our relationships with the law-makers who represent us in Washington, and where we have not had contacts before, we were able to establish them.

The March in 1979 maintained the fine traditions we have built for large turnouts and hard work. The agenda for the three days beginning April 30th and ending May 2nd was packed, but the Federation representatives, who traveled from as far as Utah and Idaho, had enough enthusiasm and stamina to keep pace with the rigorous schedule. Well over one hundred assembled for the advance briefing at 9 P.M. Sunday, April 29th, and by Tuesday, with a fresh contingent of troops from Pennsylvania, our numbers had nearly doubled. President Jernigan opened the Sunday evening meeting by bringing all of us up-to-date on the most recent national developments, and he outlined the challenge of the three days just ahead. Dr. Jernigan also announced that remodeling of our new national headquarters building was complete, so that visiting Federationists would be able to see the facility fully occupied and operational on Tuesday, May 1st. This was truly the high point of the trip to Washington this time, seeing our own national office close to the nation's capital and realizing the great potential it offers us for growth.

As for our work on Capitol Hill, the kick-off event was a Senate hearing to review the progress made to date in implementing the Randolph-Sheppard Act Amendments of 1974. Senator Randolph presided over the hearing in the beginning, receiving testimony from a panel of NFB leaders and government witnesses. The full text of the NFB testimony will appear elsewhere in this issue. While our spokesmen were Arthur Segal, President of the Blind Merchants Division; James Sofka, President of the NFB of New Jersey; Victor Gonzalez, Chairman, Agency Relations Committee, NFB of West Virginia; and James Gashel, the voice of the NFB was also heard in numbers, over 150 strong as we crowded into the packed hearing room, filling every chair and lining the walls.

This was known as an "oversight" hearing which Congressional committees conduct from time to time to see what steps should or can be taken to better enforce the laws. NFB Resolution 78-19 expressed the Federation's outrage at the statements and diversionary tactics of some of the major federal agencies which have been maneuvering to avoid providing business opportunities for blind vendors on federal property. The resolution called for oversight hearings, so we set to work on this by asking Senator Randolph to place this item on the top of the agenda for the Subcommittee on the Handicapped during the 96th Congress, and the Senator responded positively. In fact, this was the first hearing conducted by the Subcommittee, and it generated a great deal of attention.

Although oversight hearings rarely solve anything, they help to get issues and evidence on the record, and the data uncovered by this hearing will be of real value as we seek improved business opportunities through the vending facilities program. At this writing, the record is not fully developed (much is done in writing before and after the hearing), but we learned a number of interesting things. For example, we were told that there are presently 291 cafeterias which could be operated by blind persons on Department of Defense property, but only one (located on a military base in Ohio) is currently in the Randolph-Sheppard program. Upon hearing this, Federation representatives from that state sent word to the front that the base served by this cafeteria will be closed in two years—a fact which certainly dims the military's shining example. It was obvious to every-

one that especially the Department of Defense was having a hard go at finding good things to say about their responsiveness to the Randolph-Sheppard Act, for although it had nothing whatsoever to do with the subject of the hearing, the representative from the Defense Department made a point of explaining how much the military is actually doing to help the blind, helping us, that is, by doing business with the sheltered workshops through National Industries for the Blind. Apparently this man has not been reading the Wall Street Journal, and the Subcommittee was not impressed.

The hearing proceeded somewhat in this vein with the federal government witnesses trying to explain to Senator Randolph how much they supported the blind vendor program and with the Senator probing each of them with specific questions regarding their agency's lack of compliance with the law. Senator Randolph had heard our message and he did his best to help bring out the issues. Later, he made his commitment clear as some of us met with him during lunch in the Senate dining room while the Subcommittee staff took testimony from other witnesses, including the American Council of the Blind. Specifically, we discussed how best to use the results of this hearing to improve the situation for blind vendors, and we agreed on the approach of establishing an action agenda for solving specific issues. Already we have initiated this process with an on-the-spot investigation of some problems in the blind vending program in West Virginia, but much more remains to be done.

With the oversight hearing concluded, we set to work on other legislative concerns; high among them, of course, our continued drive for minimum wage protection for blind people. In the March issue of the *Monitor* we described a rule-making petition which the NFB has filed with the U.S. Department of Labor, but this does not spell an end to our efforts to achieve the same goal legislatively. In fact, the work in the Congress on this is very much in high gear. On April 26, Congressman Phillip Burton introduced the Minimum Wage for the Blind bill once again; the number for this Congress is H.R. 3764, and the bill is identical to H.R. 8104, which Mr. Burton introduced in the 95th Congress and which stirred up much interest, including attracting the Wall Street Journal's awareness through the hearing which was held.

Elsewhere in this issue we will reprint the fact sheet used by Federation representatives to explain the current law and its negative impact on the earning power and the personal dignity of productive blind workers. This fact sheet should be helpful to all Federationists in asking for support and co-sponsorship of H.R. 3764 by the members of the House of Representatives. In fact, all members of the House should be asked to co-sponsor the Minimum Wage for the Blind bill, and they should inform Phillip Burton of their desire to do so. Soon we hope to announce some action on a Senate version of this bill, but for now our attention must be focused on the House.

With respect to minimum wage, it is important to note that the new Chairman of the Labor Standards Subcommittee (the Subcommittee in the House to which H.R. 3764 has been assigned) is Congressman Edward Beard of Rhode Island (a real friend of the Federation) and a co-sponsor of Mr. Burton's minimum wage bill in the 95th Congress. During the March we met with Mr. Beard to discuss plans for this legislation in the present Congress, since he is now in the position of scheduling Subcommittee action. While at this stage, there are no specific target dates for Subcommittee consideration of the bill, there is every reason to believe that H.R. 3764 will not sit idle during Mr. Beard's tenure as Chairman of the Labor Standards Subcommittee, and

yet much, of course, will depend on what we do to gather support for the bill.

As we made the rounds on Capitol Hill, we also called attention to the continuing problem of discrimination against the blind in employment. On February 22, Senator Harrison Williams, Chairman of the Senate Committee on Labor and Human Resources introduced a bill known as the "Equal Employment Opportunity for the Handicapped Act," which promises substantially increased civil rights protection for persons having "handicapping conditions" as defined in the Rehabilitation Act of 1973. The number of Senator William's bill is S.446, and we are currently working to enlist Senate co-sponsors. The fact sheet which can be used to explain the employment discrimination against blind people which occurs and the potential advantages of S.446 appears elsewhere. Our efforts in generating interest for this legislation were highly successful, and Senate hearings are now scheduled for June 20th and 21st. Meanwhile, in the House of Representatives we met with Carl Perkins, Chairman of the House Education and Labor Committee, who agreed to support this legislation actively through his leadership position in the House, and we assembled a long list of Representatives who indicated their desire to co-sponsor the companion bill to S.446 when it is introduced in the House. At this writing, it is too early to announce the number of the House bill, but members of the House of Representatives who wish to co-sponsor the Equal Employment Opportunity for the Handicapped Act should be advised to inform Mr. Perkins of their support. This will help the legislation get underway in the House with a long list of sponsors.

Passage of S.446 can be seen as the next phase of civil rights protection for blind and handicapped persons which began with our work on the model white cane laws at the state level over the past decade. Also, with the help of Federation support, several states have included the disabled in the state civil rights laws, and it has long been our objective (confirmed in resolution 78-24) to expand our civil rights protection into federal law. Senator William's bill (and the companion bill to be introduced in the House) offers hope that this may now be achieved.

Of course, we must never visit Capitol Hill without continuing to talk about the need for improvements in the Social Security Disability Insurance program. At the end of the 95th Congress, James Burke, who had sponsored our Disability Insurance bills and helped us achieve some progress, retired, leaving the chairmanship of the Social Security Subcommittee in the House of Representatives to Congressman J. J. Pickle of Texas. Unfortunately, Mr. Pickle is not yet of the same persuasion regarding our plans for changing the Social Security Disability Insurance program, so chances for favorable action at the Subcommittee or Committee level (that is, the House Ways and Means Committee) have dimmed.

Nonetheless, our efforts to attract supporters to the concept of improved Disability Insurance for the blind must continue. The fact sheet which explains the history of the proposed legislation and the need for it will also be found elsewhere in this issue, along with Dr. Jernigan's article, "Why should the blind receive Disability Insurance" (revised and updated to reflect the 1977 Amendments to the Social Security Act).

At least ten members of the House have introduced identical Disability Insurance for the Blind bills in the 96th Congress. The first of these is H.R. 1037, by Congressman Henry B. Gonzalez of Texas. Other members who support this legislation should also be encouraged to introduce identical bills. Although it is too early to announce the number yet, Senator Dennis

DeConcini of Arizona will soon be introducing a Senate version of this bill, and Senators should be urged to co-sponsor by contacting Senator DeConcini.

At this stage in the 96th Congress it appears that there may be a serious effort to enact legislation making a number of changes in the Social Security Disability Insurance program, but many of these would merely aggravate the problems which now exist in the system rather than solving them. For this reason, we must continue to inform our Senators and Representatives that the Social Security Disability Insurance program fails to meet our needs and helps to keep blind people out of the workforce.

While the foregoing legislative concerns represent longstanding commitments of the Federation to improve the lives of blind people, it also became necessary for us to deal spontaneously with a problem related to our public image as represented by the statement of Joseph Hendrie, Chairman of the Nuclear Regulatory Commission, comparing the confusion at the Three Mile Island Nuclear Plant in Pennsylvania to "a couple of blind men staggering around making decisions." This statement of Dr. Hendrie's was quoted in the national news media only a few days in advance of our March on Washington, and it was clear to everyone that we ought to make a response. This we did in the form of a resolution, which read:

"WHEREAS, the official transcript of the Nuclear Regulatory Commission (NRC) held on March 30, 1979, quotes NRC Chairman, Joseph M. Hendrie, as saying: 'It's like a couple of blind men staggering around making decisions,' in describing the actions of officials in dealing with problems at the 3-Mile Island Nuclear Power Generating Facility; and

"WHEREAS, Chairman Hendrie's statement demonstrates his personal ignorance and represents the traditional false stereotypes about the helpless and incompetent blind; and

"WHEREAS, the principle problem faced by blind men and women not actively participating in the mainstream of American life is the lack of understanding about blindness which exists resulting in widespread discrimination against the blind; and

"WHEREAS, Chairman Hendrie's statement can only serve to erode further the public attitude about blindness with the result that it will reduce the chances of full participation in the social and economic life of this country; and

"WHEREAS, Chairman Hendrie's gross insensitivity is amplified by his high public office;

"NOW, THEREFORE, BE IT RESOLVED by the representatives of the National Federation of the Blind assembled in Washington, D.C. April 29, 1979, that we demand a public apology by Chairman Joseph M. Hendrie, accompanied by a public commitment to off-set the negative impact of his remarks by establishing the goal of making the Nuclear Regulatory Commission a model employer of blind persons at all levels."

During the March this resolution was hand-carried to Dr. Hendrie's office, and so far the response has been a great deal of hand-wringing and some stumbling words of apology, but no commitment yet to do it publicly. It seems that Dr. Hendrie is a bit skittish about facing the television cameras these days.

From all of this, it is clear that despite the beautiful spring weather which graced Washington during the first week of May, the Federationists who assembled for this year's March had little time to enjoy the scenery. While we had hoped to visit in the office of every member of Congress, we fell just a little short of this goal, hitting nearly 500, which is not too bad considering that there are 535 in all. Of course, the work

was hard, but already the results show that it was well done and a worthwhile investment. And speaking of investments, once again we were able to conduct this March on Washington without draining funds from our precious Federation reserves, for those who came realized the necessity to finance the effort and in the end contributed nearly $2,000, which met the inevitable expenses in sponsoring such a gathering. This, along with the hours of dedicated labor which went into making the 1979 March on Washington one of our best, shows the true depth of commitment which characterizes the NFB and distinguishes us as a movement. Often those who would like to keep us from speaking and thinking for ourselves wonder why it is that we continue to surmount the many obstacles they try to erect in our path, but there is no need to wonder, for the Federation is sound and growing in strength, numbers, and commitment every day. Let anyone who wonders about this check the record of our 1979 March, for therein lies the evidence of a viable and vibrant movement, which, over the long haul and the short run is absolutely unstoppable.

FACT SHEETS ON CURRENT LEGISLATION IN THE 96TH CONGRESS

Editor's Note: The following three fact sheets on current legislation in the 96th Congress were prepared in our Washington Office to inform the members of the Congress about our legislative priorities. They may also be used to provide background for Federation members who may be new to some of the issues. The fact sheets state our case concisely and are thus helpful to members of Congress and others who need some basic background facts.

MINIMUM WAGE FOR THE BLIND

Purpose

To extend to blind and visually impaired citizens the coverage of the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA).

Legislative History

The Honorable Phillip Burton introduced H.R. 8104 in the 95th Congress, a bill to amend the Fair Labor Standards Act of 1938 to provide that blind persons may not be employed at less than the applicable minimum wage under that Act.

This kicked off a re-examination of the present subminimum wage policy with respect to blind workers. Hearings were held in May of 1978 by the Labor Standards Subcommittee of the House Committee on Education and Labor. Following this, at the annual convention of the National Federation of the Blind, Secretary of Labor F. Ray Marshall announced a certain degree of support for this legislation, and the Labor Department has now scheduled a review of the subminimum wage policy, including public hearings.

Present Law and Regulations

Section 14(c) of the FLSA permits subminimum wage payments to handicapped workers and authorizes the Secretary of Labor to promulgate regulations and to establish certification procedures under which subminimum wages may be paid. Employers, including nonprofit sheltered workshops and profit-making corporations, may qualify to pay handicapped employees subminimum wages after submitting for approval by the Department of Labor a request for an exemption.

Labor Department regulations allow the subminimum wages to go as low as 25% of the statutory minimum wage, although certificates permitting exemption from the

minimum wage are generally not issued for less than 50% of the minimum in sheltered workshop employment and 75% of the minimum for employment in competitive industry.

Background Data

A study released by the U.S. Department of Labor in June, 1977, reported that there are 134 sheltered workshops serving the blind which have received approval to pay subminimum wages, and 4,451 blind workers are employed in these shops. There are an estimated 900 blind employees in competitive industry receiving subminimum wages, but exact data is not available. Exemption certificates and wage data show that many workers earn less than $1 an hour—and some get only carfare—without fringe benefits or job security. Frequent layoffs often hold their annual incomes below $1,500. Administrators of the workshops, by contrast, often receive salaries in the $50,000 range, with substantial benefits.

Approximately 90 sheltered workshops for the blind are part of a nationwide system known as National Industries for the Blind (NIB). NIB (a private organization) allocates federal government and other contracts to the workshops and receives in return a percentage (ranging from 4% to 10%) of the gross sales on those contracts. It employs approximately 60 people nationally (reportedly none of whom are blind, many being former military executives who receive substantial retirement pensions) with annual expenditures of two million dollars for salaries and other expenses.

Reasons to Adopt

Blind people, no less than other citizens, should be entitled to at least the minimum wage. The justification which has been used for paying blind workers subminimum wages is the presumption that productivity is lower among the blind than other workers, but the facts are to the contrary. Almost all blind people who work in private industry are paid the minimum wage or above, and approximately 20 sheltered workshops for the blind guarantee their blind employees at least the minimum wage. The question should be asked, why can't the other shops do so as well?

Inefficient management, substandard equipment, and poor production methods are at the heart of the problem. The blind should no longer be forced to suffer the injustice of subminimum wages in order to subsidize inefficiency and substandard conditions; the best way to improve the workshops for the blind is to require them to pay workers at least the minimum wage.

Blind workers are productive. During FY 1977, the 5,019 blind people who worked in the NIB system generated $109,502,730 in gross sales. But these blind workers were not paid an equitable amount in comparison to their productivity—salaries and fringe benefits amounted to $16,876,450, or 15.4% of the gross sales. In competitive employment it is customary for salaries and fringe benefits paid to production workers to be in the range of 20% of gross sales.

The workshops argue that they cannot increase the wages of the blind but there are plenty of facts which do not support their assertion. For example, the IRS report for the year ended June 30, 1977, filed by the Cincinnati Association for the Blind shows an operating margin for that year of $450,000. During the same period, the Chicago Lighthouse for the Blind sheltered workshop had approximately $200,000 of revenue over operating expenses, and officials have admitted that the 200 blind employees received total salaries of $461,000 while 25 or 30 sighted hourly and administrative employees received $494,000.

It is contended that the removal of subminimum wages for the blind will be harmful since blind persons who receive higher wages will lose Supplemental Security In-

come (SSI) and Social Security Disability Insurance (SSDI) benefits. This is not necessarily the case. The SSI eligibility rules for the blind permit earnings well above the minimum wage before benefits are suspended or even reduced. The SSDI rules are somewhat more restrictive, but any blind person is permitted to earn $4,500 during 1979 before SSDI benefits are terminated, and this rate is higher than the average wage which workers receive in the NIB system. Most importantly, the decision to earn one's daily bread is a matter of individual choice, and no employer should be permitted to limit a worker's earnings simply because the employee has access to other income. The blind have decided that it is better to earn a living than to live off of the earnings of others, and this decision should command the respect of all.

EMPLOYMENT DISCRIMINATION AGAINST THE BLIND

Background

Despite expenditures of nearly one billion dollars annually for the state/federal vocational rehabilitation program, most blind people remain substantially unemployed or underemployed. Social Security data indicates that approximately 30,000 blind people have jobs which pay them gross wages in excess of $375 per month, just enough not to receive Social Security Disability Insurance benefits. The problem is discrimination, not any general incapacity for work among the blind. Myths, misconceptions, and lack of accurate information about blindness caused this discrimination, leading employers to make typical statements such as the following: "I'd like to hire a blind person, I really would, but we have a factory here, and there's really nothing they can do—but you understand, I know how capable they are; I wish I could help." These phrases are the most common manifestations of the deep-seated prejudices, fears, and doubts about the ability of blind people to work productively; this is the essence of discrimination, coupled with kindness and charity.

Existing Law

Both federal and state laws have increasingly addressed these problems of discrimination by providing certain rights and remedies, but the result so far has been a patch-work system containing diverse and sometimes conflicting policies and regulations. Employers are confused, and so are the blind who seek opportunities.

The first laws (commonly known as "White Cane laws") came at the state level, and these are ordinarily based on a model developed by the National Federation of the Blind more than a decade ago. The next advancement occurred when several states passed laws covering handicapped people along with the other minorities and women protected by civil rights statutes. In 1973 the Congress entered on the scene by including three provisions related to employment discrimination against handicapped persons generally in the Rehabilitation Act. These are Section 501 (requiring federal agencies to establish affirmative action programs for handicapped applicants and employees), Section 503 (committing most federal contractors to affirmative action on behalf of handicapped applicants and employees), and Section 504 (prohibiting employment and other types of discrimination against handicapped persons by recipients of federal financial assistance).

These federal and state laws are important but limited in scope and effectiveness, and so far enforcement has often been slow—there have not, for example, been the dramatic "back-pay" orders which we have seen in the case of other minorities and women, and these are the events that make employers sit up and take notice. Nor is there a single agency in the government to oversee enforcement of these laws—the

system is complex and bureaucratic. Furthermore, the thousands of employers who engage in interstate commerce but do not operate under federal contracts or receive federal grants are generally not covered by the current constellation of laws, thus there is no clear remedy available when discrimination occurs.

Proposed Legislation

S.446 (the Equal Employment Opportunity for the Handicapped Act of 1979), introduced by Senator Harrison Williams, Chairman of the Senate Committee on Human Resources, is a bill which offers great hope, for in one sweep it would largely help to avoid the legal tangles which now exist and complete the framework of laws which are necessary at the federal level for combatting employment discrimination against the blind. In brief, S.446 attaches the phrase "handicapping condition" to Title VII of the Civil Rights Act of 1964, as amended (the employment title) so that blind and handicapped persons would be guaranteed the same protections against employment discrimination now available to other minorities and women. S.446 would make no other changes whatsoever in the Civil Rights Act. Logically, its adoption is the next step in the direction of full equality for those persons in America who have conditions which are considered to be handicapping. The blind as a group have long fought to gain this new status of equality and to organize public assistance and rehabilitation programs which are directed toward offering a hand up to productive employment, not merely a handout along with meaningless exercise.

IMPROVED DISABILITY INSURANCE FOR THE BLIND

A bill to amend Title II of the Social Security Act so as to liberalize the conditions governing eligibility of blind persons to receive disability insurance benefits thereunder.

History

The Disability Insurance for the Blind bill, which has passed the Senate seven times, was first offered in the 88th Congress by Senator Hubert Humphrey. Senator Vance Hartke introduced the bill in the 90th Congress whereby the House-Senate Conference on Social Security matters made the generally accepted definition of blindness (20/200 etc.) the standard for visual loss under the Disability Insurance program. Offered again in the 91st Congress, the Committee on Ways and Means adopted a portion of the proposed Disability Insurance for the Blind bill removing the "five out of the last ten years" work requirement which had previously applied to the blind and disabled alike, making 30,000 otherwise ineligible blind persons eligible for Social Security disability benefits. Subsequent to this, the bill passed the Senate several times in succeeding Congresses, and in the 95th another step toward full enactment was taken when the Substantial Gainful Activity Test (earnings limitation) for blind Disability Insurance beneficiaries was established by law at the monthly dollar amount which persons who retire at age 65 are permitted to earn without decreasing their retirement benefits.

Provisions

(1) Allows qualification for disability benefits to the person who is blind, according to the generally accepted definition of blindness (20/200 etc.) and who has worked six quarters in Social Security-covered work; (2) Continues payment of benefits irrespective of earnings so long as blindness lasts, rather than cutting off benefits if the blind person earns as little as $375.00 in a month, as provided in existing law.

Reasons for Adoption

(1) Reducing the work requirement is more equitable for blind persons since because of employer reluctance to hire them, the blind often cannot accumulate the necessary quarters of coverage. They are victims of the last hired, first fired syndrome.

(2) Present law keeps blind people and those who become blind out of the work force. Blind persons who seek work do so at the risk of economic disaster since their wages are often less than their disability benefits, and there is no certainty that their employment will continue. Many do not work as a result.

(3) Severe economic consequences accompany blindness. Earning power is usually cut in half, and wages must go for hiring readers, drivers, or for purchasing costly devices. The blind did not create the negative attitudes of employers which keep them from responsible, better-paying jobs; but through their lost wages, they pay for this second-class treatment. The costs of blindness should be spread across society as a whole.

(4) Reduction in welfare payments to the blind would occur if this proposal is adopted. After adoption of this measure, most blind people eligible for SSI and other welfare payments would eventually transfer to this new program. Seventy-five thousand blind people would likely become ineligible for SSI, thus there would be a cost savings to general revenues.

ISSUES AND RESPONSES

Issue: Cost

Congressional Budget Office most recent estimate: $310 million, first year, $760 million, fifth year; Social Security Administration: twice the amount of the CBO estimates.

Response

The cost estimates provided so far are questionable on several counts, primarily in their failure to understand the blind population. A more thorough investigation of this group would result in substantially lower cost figures. Consider the following analysis: There are about 475,000 legally blind persons (and this number remains stable). Half of these are over age 65. Thirty-one thousand of the remainder are children (under age 18). Of the remaining 206,500 working age blind, 166,000 are already receiving either disability insurance payments or SSI, and therefore they would not be new beneficiaries with adoption of this bill. (These are blind persons, who, if they are working, are earning less than $375 per month.) Because of other circumstances (for example, blind wives of sighted working husbands), probably another 5,500 of the remaining 40,500 would also continue to be ineligible for disability benefits. This leaves only 35,000 blind persons who are working and earning more than $375 per month, and these people would be the potential new beneficiaries.

The most important provision of this bill is to remove the earnings limit. This would provide the greatest possible work incentive for 166,000 blind persons who are now receiving Disability Insurance and SSI payments. These people will be stimulated to join the labor force (and thus begin paying into general revenues and the Social Security trust fund.) This income (which has not been estimated by Social Security) would reduce the already low cost of this bill.

Issue

"This is a good thing for the blind; but if we adopt this provision for them, we will have to adopt it later for all the disabled; and the system cannot afford that."

Response

Laws should focus on the unique problems which people have; and the barriers the blind face are more specifically economic than the barriers facing other dis-

ability groups. Other groups have major problems with architectural or other physical barriers, or frequently a physical or mental inability to compete at all in the job market. The blind are able to work, and can compete in most jobs on an equal basis with the sighted. But they are prevented from doing so by negative employer attitudes. A Gallup poll showed that Americans fear blindness more than any other handicap, and this means that the blind—although the most able of the handicapped groups to hold jobs—are the last to be hired and the first to be fired. In addition, the costs incidental to working (such as readers, drivers, or technical devices to replace sight), added to the uniformly lower wages the blind are paid, often make it economically unfeasible for the blind to go to work. Other disability groups have far more pressing problems than this economic disincentive (problems requiring different kinds of solutions); but this bill will help to remove the major barriers the blind of this nation face, and will allow them to join the mainstream of our economic and social life. It is a very specific solution to a specific problem facing the blind.

WHY SHOULD THE BLIND RECEIVE DISABILITY INSURANCE?

by KENNETH JERNIGAN

The blind of the nation are making an all-out push to secure passage of the Disability Insurance for the Blind bill. In past Congresses the blind achieved passage of this bill through the Senate, but lost its principal provisions in the Senate-House conference. But now it can and must be enacted. It will mean the difference of thousands of dollars to many thousands of blind people. It is morally right.

This may be the most important single piece of legislation affecting the blind ever introduced in this country. It certainly ranks alongside title X of the Social Security Act giving public assistance to the blind in the 1930's, the Randolph-Sheppard Vending Stand Act in the 1930's, and the Barden-LaFollette Act including the blind in rehabilitation in 1943. The provisions of the bill are simple and far-reaching. If it passes, any blind person who has six quarters of employment during which he has paid into Social Security will be eligible to draw disability insurance payments as long as he remains blind. This would be so regardless of his income or earnings.

Why should this be so? Is it really fair for a blind person with a high income to draw a monthly insurance payment? Are we being inconsistent by talking, on the one hand, about equal opportunity for the blind and their ability to compete and, on the other hand, asking for what amounts to preferential treatment?

It all depends on whether you look on this proposal as a true insurance or as a welfare payment to relieve the distress of poverty. The idea that society should give payments or subsidies to particular individuals or groups on the basis of something other than poverty or economic need is not at all new or revolutionary.

If, for instance, a rich man has three children and a poor man has none, the poor man is still taxed to help pay the costs of sending the rich man's children to the public schools. This is so because society has determined that such a system is in the best interest of the state and the nation. It is not that the rich man cannot afford to make special payments for the costs of educating his children or that the poor man (who may have no children at all) can easily spare the cash. Society is thought to be better off if

the children of all (rich and poor alike) have the opportunity to attend public schools and if all who have taxable assets (regardless of whether they have children) pay to support the schools. In fact, if only poor children could go to the public schools, our society would be segregated into classes, and there would be considerable stigma attached to attending the public schools. Accordingly, a subsidy is given to the people who have children (rich and poor alike) because a social need is thus met. We have become so accustomed to the subsidy that we do not think about it at all, and one rarely hears any serious suggestion that only the poor should be able to attend the public schools, with the rich barred from the subsidy.

Likewise, farmers (the wealthy and the poor alike) are paid support prices and subsidies. Rightly or wrongly the Congress has determined that a social need is met by the provision of the subsidy. In the same manner tariffs are charged on certain items coming into the country, taxing the consumer to support a given business or industry. It is thought to be in the best interest of the country to "protect" that particular business or industry by means of a subsidy, regardless of what it may be called.

Also, steamship lines, railroads, and airlines have been given various subsidies in the form of mail contracts and other benefits. And speaking of mail, certain types of mail (particularly first-class) make a profit while others are heavily subsidized by the government—on the theory that society receives benefits by having particular types of material as widely distributed as possible (magazines, newspapers, etc.)

Thus, it would appear that the principle is long-standing and firmly established that society shall pay a subsidy if a social benefit results. This brings us back to the question of disability insurance for the blind. Why should it be granted? In other words, what social benefit results?

Before dealing with this question let us talk for a moment about the nature of insurance. If a man goes to a private insurance company, he may buy insurance against blindness. If he then becomes blind, he will receive the insurance payments. He is receiving the insurance for which he has paid, and his income has nothing to do with the matter.

The doubter may say, "This argument would only hold true for people who become blind. What about the person who has been blind all of his life? Can a man buy insurance against what he already has?" No, a single individual cannot. But a group can. In many organizations (including the one in which I work), this very thing can and does occur. The State of Iowa has purchased hospital insurance to cover its employees. Further, it pays a large part of the premium for each employee. If a new person joins the staff and subsequently is hospitalized because of a pre-existing condition, he still draws full insurance payments as part of the group. The group has purchased insurance to cover its members (from a private company, incidentally).

These are the principles of insurance, and insurance is not welfare. It is for the rich and the poor alike. The main requisite of insurance is that it meet a need for the individual or the group purchasing it.

Having said all of this, we come squarely to the issue. We the blind are asking society to purchase an insurance policy against blindness. Of course, the blind are part of society, and the blind who are working will (just as others) pay taxes to purchase the insurance.

"So," one asks, "what is the social need to be met, and how will society benefit?" To answer the question, let us look at the situation now and compare it with the situation which will exist if our bill passes.

At present if an individual becomes blind and ceases to be gainfully and substantially employed, he likely will be eligible to draw

disability insurance. He has every incentive to remain unemployed and not to return to work at all. Why? In the first place, he is probably not an expert in the law. He only knows that he is now drawing an insurance payment each month and that if he tries to go back to work, he may lose it—whether his attempt at self-support is successful or not. The law is complex, and the talk of allowed earnings, trial work periods, definitions of gainful and substantial employment, etc., is confusing and not conducive to an attempt to make new beginnings. Furthermore, if the individual actually goes to work and (after a specified trial work period) is making even a small amount, he will lose his disability insurance payments. This is true even though he may have been drawing considerably more a month in disability insurance payments. If dependents are taken into account, he may have been drawing disability insurance payments in excess of $800 per month tax free. He is penalized for having tried to become self-supporting by losing his insurance altogether. Even if he goes to work, he is tempted to conceal earnings and, if he yields to the temptation, lives in fear of being detected.

Let us suppose that before blindness the individual had an income of $15,000 per year. If (after blindness) he finds employment at $6,000 per year, he is still not eligible to continue to draw his disability insurance, even though the loss of income has occurred.

Besides all of this, it is conceivable under the present law that the individual may become blind, go back to work, then lose his job, and thereby become ineligible ever to receive disability insurance payments again because (by going back to work) he has demonstrated that his blindness does not prevent him from engaging in gainful and substantial activity. If, on the other hand, he is willing to settle down and draw his disability insurance without any attempt to go back to work at all, he can securely rest in the knowledge that the payments will continue month after month, year after year.

If an individual is born blind, he may be eligible for disability insurance if his parents had a given Social Security status. Otherwise, he cannot qualify. There are many other ramifications and qualifications but the point is clear. Under the present law the incentives are for an individual to remain idle, to sit at home and not jeopardize his monthly check.

Now let us consider what the situation will be if our disability insurance bill passes. There is no complexity and no confusion. The blind person has every incentive to venture and earn to his full capacity. He knows that he will have a monthly insurance payment coming and that it will not be jeopardized by attempts at improving his condition. The blind person is better off and society is better off for him to be productive instead of idle, working instead of sitting at home. In addition, this does not even take into account all of the current anxiety and grief which occur because of the present complexities, mix-ups, and disqualifications on technicalities.

Moreover, there is one more matter which should be mentioned. The real problem of blindness is not the loss of eyesight. It is the misunderstandings and the misconceptions which exist. With proper training and opportunity the average blind person can do the average job in the average place of business and do it as well as his sighted neighbor. The massive discriminations which exist against the blind in employment and in opportunity come from society as a whole, not merely from the blind members of society. Therefore, it is reasonable that society should insure its members against these disadvantages.

But there are those who have objected to this proposal, arguing that it constitutes a radical deviation from the original purpose of the Social Security disability insurance

program. The usual contention is that the program was originally established for the purpose of partially replacing earnings lost due to the onset of disability. The answer to this contention has already been spelled out, but it should once again be made explicit. Under current law (which is designed partially to compensate a disabled blind individual for loss of earnings) the only actual feeling of long-range economic security belongs to those who do not attempt employment. Clearly, this is not as it should be and the legislation proposed here calls for a reversal of this negative incentive structure. If adopted, the new law would reward the efforts of blind Americans to achieve independence and self-sufficiency through employment. No longer would they have to risk the possible economic disadvantages now present in their efforts to enter the labor force. Surely, if the Social Security disability insurance program for the blind is to be directed at meeting the needs of those who are blind, of those who will become blind, and of American society as a whole, it must be designed to encourage (rather than discourage) blind beneficiaries to achieve their maximum potential vocationally.

Quite naturally, one of the concerns of some of those considering the adoption of this disability insurance proposal is the cost factor. In a letter dated September 21, 1973, to the Honorable Russell Long, Chairman of the Senate Finance Committee, from Caspar W. Weinberger, Secretary of Health, Education, and Welfare, the following statement appears:

"It is estimated that the long-range cost of the bill would be 0.3 percent of taxable payroll. (This would increase the cost of the disability insurance program by about 10 percent.) Assuming that fiscal year 1975 would be the first full year in which the provisions of the bill would be operable, about $400 million in additional benefit payments would be made in that year."

This statement, taken on its face, would appear to raise serious questions about the advisability of the proposed legislation. However, the data presented here need not lead to a negative conclusion on the subject. As previously indicated, the overriding objective in this legislation is to provide a positive incentive for the full employment and productivity of blind Americans. This kind of forward step could certainly not have a negative price tag attached, since by virtue of their employment, blind workers would become tax payers, thus generating a great deal of additional revenue. Moreover, while the data include the estimated increase in benefit outlays by the Social Security disability insurance program, they do not include any estimate of additional new revenue paid into the program as a direct result of the predictable increase in employment of blind Americans. Even if such estimates may be difficult to make, any realistic picture of the costs involved in this proposal must account for a sizable increase in revenues to both the general income-tax pool and the Social Security disability insurance program as well.

Additionally, the data presented do not acknowledge the fact that some (perhaps a considerable number) of blind persons now receiving payments through the Supplemental Security Income program would become eligible for the improved disability insurance plan and thus would become ineligible to continue as SSI recipients. In other words, the liberalization of the disability insurance program as it affects blind people would result in a transfer of some blind SSI recipients from the welfare roles to the Social Security insurance plan. Any realistic cost picture must take account of this certain decrease in the number of SSI recipients.

What these arguments suggest is a well-known fact which must be borne in mind when considering this proposed improvement in the disability insurance program

for the blind. Under our present schemes of Social Security and Supplemental Security Income, we have adopted a philosophy and developed a system which is designed to provide at least a subsistence-level income for all blind and other disabled persons. The present structure is so organized that the vast majority of blind persons fall into one of three categories: (1) those who are employed and pay taxes; (2) those who are unemployed and beneficiaries of Social Security disability insurance; and (3) those who are unemployed and recipients of Supplemental Security income payments. In other words, the present system is structured in such a way that either a blind person works and helps to pay his own way, or does not work and others pay it for him. The legislation proposed here recognizes this fact and provides for maximum utilization of the talents, abilities, and potentials of blind Americans to earn their daily bread.

But some may argue, "What you say is true, but if we adopt this improved disability insurance for the blind only, then others of the disabled will seek inclusion as well and such a step is beyond our means." This argument raises the question, "Why should this proposal be limited to the blind?"

The answer to this question is definitely not mysterious. Over the years, in Congress after Congress, the unique problems of the blind have been recognized in much sound legislation providing for special solutions. Never have the members of the Congress been unwilling to adopt meaningful programs for blind persons simply because someone else may someday want to be included. In its wisdom the Congress has always recognized that blind citizens in this country face a unique and difficult kind of economic and social discrimination. The members of the Congress have continuously demonstrated their awareness of the fact that the real problems of blindness stem not so much from any physical lack of ability, but more from a general lack of opportunity and the means of achieving a first-class status. The original adoption of and subsequent amendments to the Randolph-Sheppard Vending Stand Act, giving the blind a priority status in the establishment and operation of vending facilities in federal installations, amply illustrates the attitude of the Congress toward adopting special solutions to meet the unique difficulties of the blind.

For many years, the blind of this country have recognized that the arguments set forth here are both morally and practically sound. In past Congresses, the members of the United States Senate have voiced their agreement. Similarly, a sizable number of the members of the House of Representatives rallied to the support of this positive step forward for blind citizens. Now, again, this proposal comes before the Congress for its serious consideration and, hopefully, its adoption. Those who are knowledgeable in the field believe that the time is now at hand for a new era of opportunity in the lives of the blind of this nation. The passage of the Disability Insurance for the Blind bill will play an important part in bringing that new era into being.

FIRST SUPREME COURT RULING ON SECTION 504: IMPLICATIONS FOR THE BLIND

by PEGGY PINDER

Editor's Note: Federationists will recognize Peggy Pinder as President of the NFB Student Division. She is also a 1979 graduate of the Yale Law School.

The Congress guaranteed the right of all disabled persons to participate in federally assisted programs. Section 504 of the Rehabilitation Act of 1973, as amended is a civil

rights law protecting the disabled from wrongful discrimination in programs supported by federal funds. On June 11, 1979, the U.S. Supreme Court handed down its first opinion dealing with Section 504. The case, *Southeastern Community College v. Davis*, was brought by a deaf woman, Frances Davis, after Southeastern denied her application for admission into its nursing school.

The question which the Supreme Court decided was "whether Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against an 'otherwise qualified handicapped individual' in federally funded programs 'solely by reason of his handicap' forbids professional schools from imposing physical qualifications for admission to their clinical training programs." The Court decided that schools may use physical qualifications in the admissions process for clinical programs where the use of such qualifications can be justified.

The facts in the *Davis* case are fairly simple. Davis applied for admission into Southeastern's program of registered nursing. The program normally leads to certification as a registered nurse by the state of North Carolina. Davis is unable to hear spoken words and communicates with others by reading lips. Davis took the position that the school, to comply with 504, must take affirmative steps to enable her to participate in the program. She suggested that a member of the nursing faculty be assigned to give her individual supervision whenever she, Davis, attended at the bedside of a patient. Davis also suggested that the Nursing School dispense with some required courses altogether since she could not perform all of the tasks which a Registered Nurse might perform. Davis argued that, even though she could not perform every possible nursing task, she still had a right to be trained in those tasks which she could perform.

The Supreme Court recognized that Davis could participate in the academic portions of the nursing program without difficulty. However, during the training program, students are required to attend at the bedsides of patients. The Court found that Davis could not learn to perform this task alone as the other students would since she would always be in need of faculty supervision to help her communicate with patients. The Court found that the safety of patients would be jeopardized if Davis did not have a faculty member with her at all bedsides. Because of her deafness, Davis could never perform the tasks of a registered nurse in any setting where doctors wear face masks. Even where face masks are not worn, a doctor may need to catch a nurse's attention immediately to get a certain instrument or drug. Davis, who cannot hear spoken words, would be slow in complying with doctors' commands, possibly jeopardizing the safety of patients. Taking all these facts into consideration, the Supreme Court decided that Southeastern could legally require its students to have sufficient hearing to perform all nursing tasks with speed and safety. The Court also made some important legal pronouncements, discussed later in this article.

Every Supreme Court case can be viewed in two ways. Every important Court case acquires a public image and is generally believed to represent a single, simplified legal pronouncement. But every important case contains specific, detailed concepts and precise language which actually govern future understanding of the laws and which direct the course of long-range implementation. The present broad public understanding of *Davis* is, I think, somewhat at variance with the tone and long-range meaning of the case.

Davis's public image is one of unmitigated disaster. There are those within the handicapped community who seem to believe that a disabled person should be given

virtually anything he or she chooses to demand. These persons, of course, see *Davis* as a giant step backward. Of course, there are persons in authority within the nation's colleges and universities who are reluctant to give any disabled person the chance to better his or her life. These persons, of course, will use any tool at their disposal to discriminate against the disabled and they will doubtless claim that *Davis* justifies them in all their actions. There are those who believe that the HEW regulations on Section 504 are far too broad and too firm. These persons would welcome any undermining of HEW's authority and they will doubtless use some of the Court's language to try to weaken enforcement. But the demanding handicapped, the discriminating official, and those suspicious of HEW have all read the *Davis* opinion in a way which does violence to its overall tone and intention.

It must always be kept in mind that the *Davis* case deals only with admissions to clinical training programs. Everyone in the case recognized that Davis could have participated in the academic portions of the program with no difficulty. The case, therefore, deals only with programs which have a practical, learning-by-experience aspect. It must be remembered that Davis herself conceded she could not perform many of the tasks in the profession for which she sought training and that she could not perform many of the learning tasks without special, individualized faculty supervision. Many disabled persons can obviously participate fully in the professions for which they seek training and can perform all parts of training courses if they are given the chance and given the latitude to develop alternative techniques when necessary. The Court also required a substantial justification for excluding Davis from the program. It found that, if she were given the chance to participate in training under the same conditions as others, that the safety of hospital patients would be jeopardized. In many clinical programs, no such justification exists and disabled persons merely want the opportunity to participate in training under the same conditions as others.

The heart of the Court's opinion is its discussion of the concept of affirmative action as against the concept of discrimination. The difference between these two concepts is a hard-fought question in many areas of the law today. Equally hard-fought is the question of which concept, affirmative action or discrimination, applies in a particular case. Here it was clear that no affirmative action was required. Davis sought to participate in the practical as well as the academic course in registered nursing. However, she conceded that she could not perform many of the tasks she would be called upon to perform and conceded that, for reasons of patient safety, a member of the nursing faculty would have to remain with her during bedside visits. Because of this, she sought substantial modifications in the curriculum which the Court termed "lowering" of the requirements leading to a degree in nursing. Davis argued that, without these modifications, she would be discriminated against in violation of the law. The Court disagreed, holding that the modifications and special demands would constitute affirmative action which is not required under Section 504.

This tension between discrimination and affirmative action has been present in Section 504 thinking from the beginning. The Court expressed its understanding of 504's language by a careful reading of the law and the accompanying regulation. The "otherwise qualified handicapped individual" protected by Section 504, said the Court, includes only those persons who are, at the very simplest level, able physically to perform the tasks required by a course of study. Qualified persons under

the regulations are those who meet the "academic and technical standards" of the course of study. The Court understood "technical requirements" to include physical capacity in some cases, such as that of Davis. It was here that the Court remarked that any other interpretation of the HEW regulation, such as an interpretation requiring affirmative action by institutions, would be overstepping the authority which Congress delegated to HEW. Interpreting the regulation to require affirmative action, said the Court would raise grave doubts as to the validity of the regulation.

Few cases which go to litigation ever come out as a clear-cut victory for one side or the other, and some of the Court's language is, indeed, regrettable. But Federationists who read the *Davis* opinion will find that they share much common ground with the Supreme Court Justices. The opinion clearly reflects an image in Justices' minds of 504 as a tool for the disabled, helping the disabled open doors which have long been closed to them and helping the disabled to sweep away unfounded prejudices and fears which hinder them in their efforts to become full-fledged members of society. But this tool is to be wielded by disabled persons who are ready and able to accept the responsibilities of citizenship along with the rights, persons who can figure out alternative ways of meeting the same tests and qualifications as are met by able-bodied persons whenever commonly accepted methods will not serve. Whether the Court decided this particular case rightly or not can be debated. But the Court's general conception of 504 is unquestionably a sound one. It sees 504 as providing the disabled with an opportunity to come into the mainstream of university life on the same terms as others. The opportunity is provided to those with the motivation, determination, and independence to join in.

Federationists who have followed the development of 504 can only welcome the general thrust of the *Davis* case. Section 504, of course, could not legislate the old image of blindness out of existence. Many of the old, bad attitudes about blindness have crept forward into the implementation stage of this civil rights legislation. Many college administrators and even a few disabled people have read 504 as a federal mandate requiring colleges to provide any service and to make any modification which a disabled person may request. In a somewhat misguided effort to comply with 504, many colleges have sought to comply with all such requests, providing all sorts of special services and exemptions wherever requested in the mistaken belief that the disabled person needs all sorts of help and not a little tutoring or outright exemption to get through any course of study. This new-fangled "coddling of the handicapped" is neither required by Section 504 nor desired by disabled persons who merely seek to achieve or else to fail according to the same standards applied to all others. The Court, with astonishing good sense, has balanced the legitimate claims of the disabled for entrance into society with the general tendency to relax and "make things easy" for the handicapped. The Court strikes the balance for equality of opportunity, inviting the disabled to join in, just like everybody else, freed from unreasonable prejudices and fears but subject to the same tests as are all others.

The Court states: "We do not suggest that the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons always will be clear. It is possible to envision situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified persons of the opportunity to participate in a covered program. . . . situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory. Identification of those in-

stances where a refusal to accommodate the needs of a disabled person amounts to a discrimination against the handicapped continues to be an important responsibility of HEW. . . . It is undisputed that [Davis] could not participate in Southeastern's nursing program unless the standards were substantially lowered. Section 504 imposes no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person."

Two other aspects of the Court's opinion are worthy of note. First, the Court itself notes that Davis could obviously have handled all the necessary academic work and some of the practical, bedside work as well. It merely holds that Southeastern was not required to admit Davis to the full course of study leading to a license to perform all the tasks of a registered nurse. Davis herself conceded that she could not perform all of the tasks. The holding in no way hinders students seeking admission to clinical programs who, in cooperation with a school, work out a course of study including all of the things which physically can be performed. Arrangements such as the one under which Temple University graduated a blind man as a medical doctor to enable him to become a clinical psychiatrist are most certainly still possible. Persistence and reasonableness on the part of both the student and the college will open up many opportunities not absolutely required by 504. Purely academic courses of study are not affected by this opinion at all, and I believe that the number of clinical programs covered by the opinion will be small indeed.

The other aspect of the opinion worthy of note is the failure, even by the Supreme Court, fully to understand the position of the disabled. The Court condescendingly "admires" the efforts of Davis to join the mainstream workforce just prior to its announcement of its final decision to deny her admission. More importantly, Justice Powell lays great emphasis on the improvements in technology as the force most likely to enable the handicapped to become ever more equal members of society. It is regrettable that this misunderstanding still persists. Many people still seem to believe that the disabled, with their own wit and determination, are incapable of taking up the usual rights and responsibilities of living. They believe that the disabled can be "enabled" to be sort of more equal with the able-bodied only if the wizardry of modern technology is used to equalize the disableds' otherwise hopeless position. Of course, technology, like 504, is only a tool to be used wisely or unwisely by the disabled persons to whom it is made available. Technology can never "fix the disabled" or "make equal" persons otherwise unwilling to take up the responsibilities of living an independent life.

The general thrust of the Court's opinion in *Davis* is exactly in line with what we as Federationists have long sought: the right to live in the world along with all the rights and responsibilities that this implies. Let us hope that, when a case of real discrimination such as that suffered by Ellen Schuman of Connecticut or Steven Henry of Louisiana reaches the Court, or when a case of real injustice like that suffered by the Cleveland Society vending facility operators or that suffered by sheltered workshop workers all across the land reaches the Court, that the Court's sense of wrongful discrimination will be as keen and its pledge to help the disabled into the mainstream of society will be kept.

RANDOLPH-SHEPPARD OVERSIGHT HEARINGS

by JAMES GASHEL

Editor's Note: On April 30, 1979, as reported previously in this issue, the Subcommittee on the Handicapped of the Senate Committee on Labor and Human Resources held an "oversight" hearing to review the implementation of the Randolph-Sheppard Act Amendments of 1974. James Gashel represented the NFB along with a panel of Federation leaders from New Jersey, Pennsylvania, and West Virginia. The following is the NFB testimony presented in this hearing.

Mr. Chairman, My name is James Gashel, I am the Chief of the Washington Office of the National Federation of the Blind. My address is Suite 212, Dupont Circle Building, 1346 Connecticut Avenue, N.W., Washington, D.C. 20036. I am pleased to be here this morning to testify once again before the Subcommittee on the Handicapped, and I want to express my appreciation to you, Mr. Chairman, for scheduling this oversight hearing. We appreciate the fact that this subject matter is of high priority to the Subcommittee, and we pledge our efforts to work with you beyond these hearings to ensure that the result of our testimony and your investigations will be more cooperative and consistent implementation of the Randolph-Sheppard Act, and not merely another printed volume on a library shelf. I cannot help but believe that you share this goal with us.

The 1974 Amendments to the Randolph-Sheppard Act stand as a landmark legislative accomplishment for which you, Mr. Chairman (along with the cooperation of your colleagues in the Senate and the House of Representatives), are primarily responsible. This legislation sought the creation of several thousand new jobs for blind people and set up the administrative machinery to bring this about. It has now been nearly five years since the 1974 Amendments became law as Title II of Public Law 93 – 516, so it is timely that the Subcommittee should initiate a full review of the Randolph-Sheppard program to learn how the various state and federal entities are carrying out their responsibilities and where the weaknesses might be.

Any time we talk about the Randolph-Sheppard Act, I think we should keep in mind and emphasize that it was passed for the benefit of all blind people in this country, not just those who happen to operate vending facilities at any particular time. While the program does offer direct employment to approximately 4,000 blind persons currently (considering the number of vending facilities on federal and non-federal property), all blind people have a profound interest in the health and progress of the blind vendor program. In the National Federation of the Blind, we believe this very strongly, hence, there are representatives here today from virtually every state and the District of Columbia—some are blind vendors and some are not, but all of us representing the blind in our home communities throughout this country have a very real stake in the viability of the Randolph-Sheppard program, for above all, we appreciate its value in providing visible advertisement of the employment potential of the blind, and the program must always be directed with a careful eye toward stimulating a broad range of opportunities for blind people in government service and private industry.

It is a fair statement that over the years the Randolph-Sheppard program has been the victim of competing interests, and because of this phenomenon, the objectives established by the Congress have often not

been achieved. The 1974 Amendments sought to rectify this situation by clarifying the rights and responsibilities of blind vendors, state licensing agencies, federal property-managing agencies, and the Rehabilitation Services Administration in the Department of Health, Education, and Welfare. We are now far enough along to assess the impact of the 1974 Amendments, and our position is that by and large to this point, the corrective action which the Congress had in mind has not occurred. Now, I do not mean this to be understood in the negative or complaining sense—we are not down-beat or pessimistic to the point of despair, for the 1974 Amendments do offer great potential. The central thesis of this testimony is, however, that the potential of the 1974 Amendments can be realized when the various authorities, both state agencies and federal agencies, cooperate and thoroughly understand who has what responsibilities and who has what rights. I think we have a sound law here (of course, you could always think up changes that might be nice to have); but what we need now is some mechanism to work out the substantial differences which exist between the various agencies involved and a commitment by each and all of them to work in concert to carry out the intentions of the Congress. This is much easier said than done, but I believe it is possible, and this oversight hearing offers to be the beginning of this process, but we pray it will not be the final word.

I will proceed to summarize some of the problems which we are encountering and point to possible solutions:

(1) *Leadership Role for HEW/RSA:* The 1974 Amendments call for strengthening the federal government's compliance with the Randolph-Sheppard Act through coordination by the Department of Health, Education, and Welfare and specifically, the Rehabilitation Services Administration. RSA was intended to take the lead and should presumably be held accountable for establishing the mechanisms which will make for consistency in policy on vending facilities issues which arise throughout the federal government. Yet, there is no consistency, and there appears to be no mechanism whatsoever for achieving it. For example, later I will discuss a Postal Service policy of prohibiting the sale of beverages and other food items in Randolph-Sheppard facilities located in Post Office lobbies. Does RSA agree that this policy is appropriate? I believe they do not, but were they consulted about it? I believe they were not. They should have been, and the policy should not go into effect without RSA approval, assuming that is, that they would grant it, which I do not assume. RSA and HEW must no longer abdicate leadership responsibility; the federal effort must be coordinated according to the law, and certainly the administrative mechanisms (which may involve clearance procedures and other arrangements beyond the mere issuance of regulations) could be instituted without any change in the law—they should be.

Within HEW, there are other steps which could also be taken to give the Randolph-Sheppard program the kind of support it needs at the federal level. For instance, this is a complex law, and the relationships make its interpretation even more intricate—a competent, full-time lawyer could well be kept fully occupied—but what kind of arrangements exist for legal support? I think Randolph-Sheppard gets less than one-eighth of a lawyer, and this results in a major log-jam, so whenever we complain about a delay in solving a particular problem, the answer comes back: "It's at the General Counsel's office," and it stays there. There could be a full-time lawyer in the Bureau for the Blind handling Randolph-Sheppard matters.

This relates to my next point concerning staff in general at the federal level for Ran-

dolph-Sheppard. The 1974 Amendments authorized a total of eleven additional positions (including one super-grade position) in the Office for the Blind, but they are mostly unfilled. When will these positions be filled? What are the possibilities for reallocating staff from functions in HEW which are being phased out, or where personnel becomes available through the alleged efficiencies which occur in the various reorganizations? Coordination will not occur without an adequate staff, that much is clear.

Related to this is money. Whenever we ask why more is not being done on Randolph-Sheppard, one answer comes back: "No money." Section X of the Act authorizes appropriations of "such sums" as may be necessary, but no Administration has ever asked for funding. Does RSA include requests for appropriations for Randolph-Sheppard in its annual budget process? Does HEW include these in its request? Is the Office of Management and Budget the culprit? Who has failed to come forth with a specific push for funding under this authorization? I think the answer is that we all have failed to a certain degree, but the Administration is primarily responsible for letting the Congress know of the needs for appropriations so that this, as well as other programs, can be administered effectively.

(2) *Training and Upward Mobility:* Almost forgotten among the 1974 Amendments are the mandates for "uniform and effective training programs, including on-the-job training" for blind vendors, and "upward mobility" provided through "follow-along services" authorized under the Rehabilitation Act of 1973, as amended. These features mean a great deal to blind persons who are striving to be self-supporting and independent, but despite these mandates the federal regulations are not specific on training programs and the states (or some of them) still fail to teach blind vendors how to run their businesses independently. Many vendors complain to us that they are too controlled by the licensing agencies, which, while keeping their books and setting their prices, do not teach the skills of independent business management. Other blind people try the vending program as a means to get some ready work experience without wanting to make a career of it, but they still find agencies who are unwilling to consider offering them further services on the theory that they "already have a job." We need more specific federal regulations on training and upward mobility, and a greater commitment by states to foster independent business skills, moving away, eventually, from the controlled types of programs which exist.

(3) *Reconciliation of Vendor Grievances:* One of the most outstanding features of the 1974 Amendments was a new grievance mechanism involving state-level hearings and federal arbitration if necessary. No other human services program that I know of offers its participants such a meaningful chance to settle grievances on terms of fairness and equity. This is a tribute to you, Mr. Chairman, and I hope we can some day carry the concept over into some of the other programs, such as the Rehabilitation Act, but right now there are some administrative problems which must, and can, be cleared away.

The first of these is the RSA notion that blind vendors are not necessarily entitled to arbitration, never mind the fact that the law says the Secretary "shall convene" an arbitration panel, without putting any conditions on the matter. It is argued by RSA that in the Senate report accompanying S.2581 (the original Randolph-Sheppard bill in the 93rd Congress) the possibility of dismissing pending arbitrations was suggested if the complaint is regarded as frivolous or appears to have been brought for purposes of harassment. We have pointed out to RSA that the law does not say this, only the Senate report does, and I get the

rather distinct impression that they read these reports selectively, using them as justification for doing something, or justification for not doing it, as the case may be.

I believe the data will show that blind vendors have not abused their arbitration rights—they have not gone rushing to the Secretary of HEW with every little problem —yet today we still see arbitration as an unkept promise. I believe at least one request for arbitration has been dismissed—why? I know that not one blind vendor arbitration has occurred to this date—why? The first one in line (if it ever is scheduled) is a substantive grievance against the state of Georgia (I will touch on the specifics later), but Georgia has been doing all it can to block the federal-level arbitration for at least a year and a half, and HEW appears to be inclined to go along with the state of Georgia, all the while promising us our day in court. You get the idea that what they actually mean is that we can wait until the current Administration leaves office, whenever that may be. We still think that blind vendors have a right to arbitration—the law says so—and since Congressional intent is the issue, the Subcommittee could help to clarify this for HEW.

Another problem on grievances is at the state level. The law offers vendors the right to full evidentiary hearings and assumes that the decision which is rendered will be implemented, even if it is contrary to the state's original position. In at least one instance (the District of Columbia), and there may be more, we have a decision from a hearing officer which upholds the position of the vendor, but program officials are not implementing it and nearly a whole year has gone by. How can the vendor involved get justice? RSA officials know about this case, and I think they would honestly like to do something, but they have not done anything yet, and all the while here is a state agency in the nation's capital, in the shadow of Capitol Hill and HEW which is quietly getting away with violating the law, the regulations, and the vendor's rights. If this can happen here and be known to all and sundry, where else can it occur, how many more states can get away with similar violations, and how long will it be allowed to continue?

(4) *Use of Vendor Committees:* Another unparalleled advancement was made for the consumer population with the creation in the 1974 Amendments of participating vendor committees for each state. Some of these have worked fairly well, but it has not always been easy to convince program administrators and even federal officials that specified administrative functions must now be shared with the representative body of blind vendors within each state. In South Carolina, for example (under a previous director of the state Commission), the vendors committee was constantly downgraded and referred to as an "advisory" body and then almost never consulted while the agency did what it pleased. With a change in administrations at the agency in South Carolina, however, the vendors are now involved. This maneuver of lowering the committees to "advisory" status has been attempted in other states as well. Currently, in the state of Washington we have a problem where the director of the agency has adopted an authoritarian approach in dealing with the vendors, refusing to recognize the committee as a legitimate participant in the development and administration of the transfer and promotion system, yet the law specifically gives the vendors a clear responsibility for participation in this important area.

States such as Washington which have under-utilized the vendors committees should be called upon to explain their policies in detail and their commitment to make changes if necessary. Furthermore, RSA should provide better guidance to the states in the responsibilities of the committees and how these can be carried out, and RSA

should monitor performance of the states in this area with an eye to corrective action where indicated.

(5) *Program Expansion:* The 1974 Amendments and HEW's regulations contain several provisions designed to ensure that a greater number of opportunities for the operation of vending facilities on federal property will be available to blind persons. For example, federal property-managing agencies are required to notify state licensing agencies prior to occupying or substantially renovating federal property, in order for the state licensing agency to determine that a satisfactory site is or will be available for a vending facility. One would think that this process of prior notification, with the states having an early opportunity to negotiate for appropriate locations, would result in substantial program expansion on federal property, but this has not occurred. We would like to know why it has not worked. We are aware that there are some instances where federal agencies are not observing the notification requirement—for example, this recently happened with a Veterans Administration facility in the state of Kentucky—but the other part of the question is, are the state licensing agencies turning down vending opportunities, and if so—why? Are the opportunities considered unsatisfactory? Through negotiations could more suitable locations be obtained?

(6) *Assignment of Cafeterias:* The amended Randolph-Sheppard Act includes special provisions to ensure that cafeterias are considered "vending facilities" and that blind vendors will have an opportunity to operate them. For a long time, we have sought to move the Randolph-Sheppard program in the direction of these more complicated full-scale type operations since some people like the challenge of this type of business as opposed to a "lobby stand," and since the cafeteria operations demonstrate the increasing employment potential which blind persons possess. The problem we are having now is that the HEW regulations and the policies of other federal agencies are holding us back. The regulations, for example, favor a competitive bidding process as the method for determining, on an individual basis, whether or not a particular cafeteria can be operated successfully by a blind person. This bidding procedure places state licensing agencies at an obvious disadvantage vis-a-vis corporations which have food service as their only business. Many states are reluctant, we believe, to participate in the bidding competition against the major food service corporations, thus letting a possible opportunity go.

I will have more to say about cafeterias later when I discuss some specific GSA policies, but as a general matter we ought to see if the bidding process can be eliminated in order to offer state licensing agencies a true priority to obtain these cafeteria operations. Because we insisted upon it, the HEW regulations do suggest that federal property-managing agencies may enter into "direct negotiations" with the state licensing agency (operating outside of a bidding process), but this option is seen as secondary, and so far as any of us know, it has rarely been used. To us, however, bidding is not competition, no matter how you make it sound. I think the data will show that there has not been a substantial increase in the number of cafeterias on federal property which are operated by blind persons since the adoption of the 1974 Amendments. This suggests that still there is something wrong, and we would offer the bidding process as the major offender.

(7) *Vending Machine Income:* Vending machine income (including commissions paid by commercial vending companies) is to be shared with blind vendors and state licensing agencies under the amended Randolph-Sheppard Act, and the head of each property-managing agency is responsible

for collecting, accounting for, and disbursing these funds as provided for in the law. A distinction is made between vending machines which are in "direct competition" with vending facilities operated by blind persons and those which are "not in direct competition." In the case of income from vending machines in "direct competition" with blind vending facilities, 100% of the funds to accrue to the blind vendors or state agencies. Income from those machines "not in direct competition" is shared with 50% or 30% going to the Randolph-Sheppard program, except that no vending machine income is payable if it amounts to less than $3,000 annually, where the machines are "not in direct competition" with a vending facility. This brief description of the provisions in the law and HEW regulations shows the complexity involved, and this very complexity itself breeds abuse. By and large through one mechanism and another, most federal property-managing agencies have avoided paying anything near the correct amount of vending machine income to blind vendors or state agencies. I will comment later on some specific property-managing agency practices with respect to the vending machine income-sharing provisions, but at this stage I would ask the Subcommittee to use the full extent of its powers to explain the vending machine income-sharing provisions and what the Congress expects in the way of positive good-faith action. Perhaps a continuous monitoring mechanism needs to be established for a time to make these agencies accountable; this is an option which might well be explored.

(8) *Advocacy Functions of State Licensing Agencies:* States were given a powerful weapon with the provision in the 1974 Amendments for states to seek federal-level arbitration when they determine that federal property-managing agencies are not acting in accordance with the Randolph-Sheppard Act. Thus far there has been one state agency arbitration (North Carolina) and the state agency won, providing improved business opportunities for blind persons in that state. Yet, today, most of the states seem timid, or for some reason reluctant, to exercise their new authority vis-a-vis federal property-managing agencies. Oftentimes there is the feeling that a problem can best be solved by somebody in the Bureau for the Blind in Washington or perhaps in an RSA regional office, but our experience is that these officials, already overburdened with diverse responsibilities, do not have at hand either the will or the specific mechanisms to deal with the problem. Actually, the states in many ways are in a better position to serve as advocates for blind vendors and must begin to assume the responsibility for doing so. We have had cases where states should have sought arbitration to secure vending machine income for blind vendors who are not receiving the specific proportions of vending machine income to which they are entitled. We have had other instances where states have knuckled under when a federal property-managing agency decided to put a contract for a cafeteria out to bid. The Georgia arbitration which I mentioned earlier is a very good case in point, since in large part, the dispute which our blind vendor has with the Georgia licensing agency grows out of its inaction or capitulation when the Defense Department in Albany, Georgia decided to terminate its agreement with the licensing agency, putting a blind vendor out of a job, and awarding a contract to a private food service firm. This occurred in 1977, but this same Defense Department installation was pleased to claim high credit from you, Mr. Chairman, and others in 1973 when it boasted of its impressive initiatives to turn the cafeterias on the Marine base over to the blind vending program in the state. In 1977, despite successful operations by the blind, the Marine base wanted them out. The Georgia licensing agency could have

fought this, but it did not. Now we are forced to initiate arbitration against the state to make it fulfill its advocacy function. The same story could be played out again and again across this country, and somehow we must get the states to understand that they actually do have new-found rights.

(9) *Specific Problems with the U.S. Postal Service:* There are three unsolved and very distressing problems arising from Postal Service policies with respect to the Randolph-Sheppard Act. The first of these is the notion that only "dry stands" will be permitted in the lobby areas of Postal installations. This means that vending facilities which can serve a wide variety of food items and beverages under the amended definition, would only be permitted in Postal work areas, and then the Post Office has had a long-standing policy of not awarding permits for the operation of Randolph-Sheppard facilities in areas where employees work. In other words, the blind vending program is in a Catch-22 situation—"You either take a cigar stand in the lobby, or you get nothing at all." It seems ironic that the Postal Service would begin to take this course of action (as it says, reinstituting an old policy) at the very time when the Congress has gone in the opposite direction by amending the definition of vending facilities so as to move away from the old concept of Post Office lobby stands. We can only conclude that the Postal maneuver of drying up the wet stands is a deliberate attempt to thwart the purposes of the Randolph-Sheppard Act and to diminish viable business opportunities for blind persons on Postal property.

Combined with this is the second problem policy of the Postal Service which is the splitting of automated vending locations so as to discourage blind vendors and state licensing agencies from applying for permits to operate them. This maneuver has become so ridiculous as to be laughable, but still the Postal Service seems adamant in holding to the line that only one blind person may operate under one permit, and a permit may include as few as two (or possibly even one) vending machines. This ridiculous interpretation seeks to make a mockery of the Randolph-Sheppard program. What Postal employee would want to live off of the income from two vending machines?

The third policy relates to the "break-even" arrangements for vending machines which have not been established as an avoidance maneuver for sharing vending machine income with blind vendors and state licensing agencies. Under these so-called "break-even" contracts, there is no commission paid by a commercial vending concern for the operation of the vending machines on Postal property, and therefore, there is no vending machine income to share with anyone—the employees get all the benefits through reduced prices, and even free days, on the vending machines. This, again, is a blatant maneuver to thwart the purposes of the Randolph-Sheppard Act, and we hope that action will be forthcoming to stop such shenanigans.

(10) *Specific Problems with the General Services Administration:* GSA continues to discourage the operation of cafeterias as part of the blind vending program, despite the amended Randolph-Sheppard Act. In most instances, GSA has been unwilling to exercise its option to terminate contracts for cafeterias at their five-year expiration, preferring instead to continue existing arrangements with private food service corporations; hence, these contracts will last for at least fifteen years, if not longer. Also, GSA continues to use the "bid solicitation" method for awarding cafeteria contracts, and there are no exceptions to this rule, so far as we know. Furthermore, I think you would find that GSA's bid solicitation forms for cafeterias fail even to mention the possibility that the cafeteria contract may be awarded under the priority

provisions of the Randolph-Sheppard Act. It is almost as though GSA never actually anticipates assigning one of these cafeterias to the blind vending program. If there is truly a priority, you would think that all bidders would be advised of it before they go through the lengthy process of preparing a submission for GSA consideration. Given the amended definition of "vending facility" in the Randolph-Sheppard Act, we think it is time to end the sharp distinction between ordinary facilities, which were commonly known as "vending stands" before the 1974 Amendments, and cafeterias. Now the latter are vending facilities under the Randolph-Sheppard Act and the priority should be applied to them as well as to other types of locations.

There are also some problems with respect to the collection and disbursement of vending machine income on GSA property. In some instances, payments are only now beginning, and there has generally not been retroactive payment of vending machine income going back to January 2, 1975, as required by law. GSA also claims that there are "open-ended" vending machine contracts which prevent disbursement of funds to blind vendors or state licensing agencies, but GSA has not exercised its options to terminate such contracts as may now be in violation of the Randolph-Sheppard Act. Surely this is possible.

(11) *Specific Problems with the Department of Defense:* The present situation with respect to the Department of Defense has been outlined rather completely in the General Accounting Office review of the problems concerning vending machine income in Texas. In many instances, the Defense Department remains substantially out of compliance with several sections of the Randolph-Sheppard Act, trying instead to convince the Administration and the Congress that amendments are needed. The major problem surrounds exempting vending machines which are physically located outside of post exchange or ships' stores systems facilities. HEW contends that income from these machines must be shared with blind vendors and state licensing agencies, and DOD contends that it should not be shared. The GAO analysis found DOD out of compliance with the income-sharing provisions of the Randolph-Sheppard Act. If the Department of Defense expects to get much support at all for its legislation, one would think that it would begin by complying fully with the letter and the spirit of the law, and then after we have some experience with this process it might be that there would be enough reason to seek amendments either to the law or to regulations which may apply to DOD facilities only. In other words, while one is openly violating the present law, it comes with ill grace to come forward and ask for amendments.

Mr. Chairman, these are the major areas of concern with respect to the current status of the Randolph-Sheppard program. Admittedly, we have cited many weaknesses, and there are others, but described here are the major trends. Again, we express the hope that this oversight hearing can be the first major event in not only reassessing the implementation of the program as the 1974 Amendments intended, but in establishing a renewed (or in some cases, a first-time) commitment to achieving the purposes of the Act through good faith cooperation with other agencies and blind vendors. As I said in the beginning, we have certainly not given up, for there is great potential which can be realized, but I would have to be candid in saying that it will require continued participation by this Subcommittee in helping the various entities to understand their obligations and in securing their willingness to fulfill them. This would be a very meaningful contribution at this point, Mr. Chairman, and with that, I will simply express our willingness to participate actively in a revitalized, purposefully directed implementation process.

'79 NFBT CONVENTION BIGGEST EVER

by TOMMY CRAIG, Austin Chapter

The National Federation of the Blind of Texas held its 1979 convention February 16 through 18 at the Stephen F. Austin Hotel in Austin, Texas. This year's convention was the largest gathering of blind Texans ever, and it indicates the growing strength and determination of the organized blind movement in this state.

On Saturday morning, the convention heard Chuck Russell, Director of Services for the Visually Handicapped, Texas Education Agency, and Bill Miller, Superintendent of the Texas School for the Blind, discuss the education of the blind in Texas. Mr. Russell promised to keep his office open for consumer input from the NFBT. Upon questioning, Mr. Miller revealed that the Texas School for the Blind is exploring the possibility of obtaining accreditation by the National Accreditation Council. In response, the convention passed a resolution condemning this action. Mr. Miller was also harshly criticized for the lack of services given to non-resident blind students who need skills training in mobility, braille, and other specialized areas.

Next, Mr. Walter Musler, Board Member of the Texas Commission for the Blind, discussed the mismanagement of services for the blind by the state agency. This has been a growing concern of blind Texans and has culminated in a request for the resignation of Burt Risley, the Director of T.C.B., by the three commission board members who are blind.

Saturday afternoon, Mr. William Harding from the State Board of Insurance told the convention of the Board's plans to end insurance discrimination against the blind in Texas. Mr. Harding assured the NFBT that he would support legislation and work to establish a state regulation prohibiting insurance discrimination against the blind in Texas. This is another step forward in our struggle for equality.

Afterwards, Mr. A. W. Parker and Mr. David Halpeny with the International Brotherhood of Teamsters discussed the organization of sheltered shops. We were told of the progress made at the Houston Lighthouse for the Blind, and we were assured that the Teamsters will assist other blind shop workers who ask for their help.

Among other topics discussed Saturday were Social Security benefits for the blind, Ms. Betty Grubbs; Library Services, Mr. Don Bailey; and the establishment of a dog guide school in Texas, Mr. Harrison Alper. Dr. Kenneth Jernigan, Pres. of the NFB, also spoke to members about concerns on the national level.

Saturday evening began with a gala banquet. Kenneth Jernigan, the keynote speaker, inspired a record number of Texans with his remarks concerning the problems ahead and the victories already won by the Federation. Immediately following the banquet, there was a dance at which Federationists could relax and enjoy each other's company.

On Sunday morning, attention was again focused on the problems facing blind Texans as discussion centered on the discriminatory practices of Southwest Airlines. The convention listened to Ms. Shelley Hutchinson tell of the harassment she had received from Southwest personnel. After hearing this discussion, the members unanimously approved a resolution condemning the actions of Southwest Airlines and authorizing NFBT officers to take any steps necessary to stop these practices.

We were also privileged to have Mr. Steven Henry from Louisiana tell of his struggle to achieve equality with the U.S. Postal Service.

Mr. Abbey Hue Lewis of Dallas was re-elected to a two year term on the NFBT Board, and Mr. Albert Wilson of San Antonio was elected to fill a vacancy left by the departure of Ms. Shelley Hutchinson. Jeff Pearcy of Austin was elected as alternate delegate and Glenn Crosby, President of the NFBT, was elected as delegate to the national convention in Miami Beach this summer.

This was the biggest and the best NFBT convention ever. Once again this proves that the organized blind movement is alive, well, and growing stronger in Texas.

THE NFB OF LOUISIANA STATE CONVENTION

The NFB of Louisiana State Convention was held March 30 through April 1, 1979 in Alexandria, Louisiana. Dr. Kenneth Jernigan and Mary Ellen Anderson came from the National Office to be with us at the convention.

Friday evening was taken up by registration, a Hospitality time, and Committee meetings.

Several speakers talked to us Saturday morning—including Mr. Chaney, President of the Alexandria City Council, who welcomed us; Dr. Jernigan, who discussed associate memberships, reviewed NFB happenings over the past year, and discussed what the NFB should mean to us; State Representative Scott, who discussed the country's inflation problems; Mr. Seaux from the Social Security Administration who discussed SSI and Social Security Disability; and a short talk by Mr. Dunn from the Rapides Parish Police Jury.

During the afternoon business session, new amendments were discussed, committee reports were given, and motions were discussed and carried. The NFB of Louisiana is working on a Commission for the Blind in order to improve services for the blind in this state, and much discussion about legislation and methods for getting a Commission Bill gave us considerable motivation to keep working for this goal.

The Saturday evening banquet was a time for good food, good conversation, the presentation of awards and charters, and a speech by Dr. Jernigan. Charters were presented to the newly-formed Lake Charles Chapter, and to the new Blind Merchants Division. The Eddie Figueron Award, an award given to a person who has been chosen the individual who has done the most outstanding work in the state affiliate, was presented to John LeMaire. Dr. Jernigan discussed attitudes about blindness, the problems with the FAA and the airlines, and reminded us that the NFB is a national movement of the blind helping and speaking for ourselves.

On Sunday morning, the new amendments were voted and all carried. Our election of officers held that morning brought forth the following new officers: Mr. Hank Labonne, President; Mr. Jack James, First Vice President; Mrs. Mary Lou Carter, Second Vice President; Mrs. Margo Downey, Secretary; and Mrs. Judy Cook, Treasurer.

Our convention was a great success. We are already looking forward to whatever this year will bring, and to our convention next year in Lake Charles, and, of course, to the National Convention in Miami Beach!

VERMONT CONVENTION

The spring convention of the Vermont affiliate of the National Federation of the Blind was held at the Sheraton Motor Inn in Burlington on April 21, 1979.

The meeting opened at 9:45 A.M. with the Mayor of Burlington, Gordon Paquette, who welcomed us to the city. We

had a full day's program with presentations by state officials and others responsible for serving the blind of Vermont. We were also pleased to welcome several Federationists from neighboring states: Paul Demondaco and Minetta Scott from Massachusetts, Junerose Killian of Connecticut, Frank Snee from New Hampshire, and Reed Devlin from New York.

Marc Maurer, who is no stranger to Vermonters, for he helped organize the affiliate and has come to visit us since, was our national representative. He reviewed the progress of legislation and our activities in several other states. He told us of the victories the blind are winning in civil rights and he emphasized the need for unity and strength.

This was perhaps our finest convention yet. We now have 39 members in our small but growing affiliate. We are all hard at work to improve the image of blindness in the state and to strengthen the voice of the blind in determining the policies of the state Division for the Blind and Visually Handicapped, which is supposed to provide services to us. The convention, as always was a time of rededication to these goals and a chance for us to renew our commitment to the movement. We also signed up several persons for the PAC plan; all in all it was a great success.

RECIPE OF THE MONTH

by SALLY O'CONNOR

Note: Sally O'Connor is an NFB member from Boston, Massachusetts.

QUICHE LORRAINE

Ingredients

1 frozen pie shell
8 slices crisp bacon, drained and crumbled
4 eggs
1½ cups milk
½ teaspoon salt
Dash cayenne
2 cups shredded Swiss cheese
2 tablespoons flour

Heat oven to 350°. Combine eggs, milk, and seasonings. Mix well. Crush cheese with flour. Add cheese mixture and bacon to eggs. Pour into pie shell. Bake at 350° for 40 to 45 minutes. Let stand for 10 minutes before serving. Serves 6. Add bacon bits on top if desired. Instead of bacon, you may use spinach, shrimp, broccoli, mushrooms, or scallions, or any type of filling desirable.

MONITOR MINIATURES

□ Richard L. Porter, President of the Beckley, West Virginia Chapter of NFB, sends the following: "The National Federation of the Blind of West Virginia will be holding their annual convention at the Ramada Inn in Beckley, West Virginia, August 11th and 12th. We invite you to visit and enjoy yourself at our convention."

□ In the article on the Texas Convention, reference was made to a current contro-

versy surrounding the Texas Commission for the Blind and its Director, Mr. Burt L. Risley. On Friday, June 8, at a meeting of the Commission, Mr. Risley announced his retirement, citing health reasons. He emphasized that this decision was his own and was unrelated to the recent allegations of financial wrong-doing prominently featured in several Texas newspapers over the past several months. While Mr. Risley's retirement does not become effective officially until February, 1980, he has already stepped aside from his duties as Director of the Texas Commission, and it is anticipated that an Acting Director will be named shortly.

□ On Monday, March 19, Pat Estes, our active and energetic president of the NFB of Maine, testified before the State Senate's Committee on Election Laws. *Monitor* readers will recall that one of the last campaigns launched by Helen Collins shortly before her death was the election law reform in Maine so that blind people would be allowed to choose their own assistants in the voting booth as is done in almost every state. While we cannot yet report the final outcome of the Maine affiliate's efforts to secure equal voting rights for the blind under state law, we can say that the blind have mounted the barricades, and victory is ultimately in sight.

□ On March 23, 1979, a meeting was held to establish the Jackson County Chapter of the National Federation of the Blind, in Jackson County, Missouri. Approximately 24 persons joined the new chapter. A constitution was adopted and the following persons were elected as officers: Richard Schell, president; Becky Bullington, first vice-president; Tom DeMarco, second vice-president; Margaret Horn, secretary; Carl Wyatt, treasurer; Tiny Beedle, Doug Henley, and Jeremiah Wells, members-at-large.

Since some of the board and officers of the Kansas City chapter of the National Federation of the Blind were elected to the same positions in the new Jackson County chapter, elections were subsequently held in the Kansas City chapter of the National Federation of the Blind on April 7, 1979. Officers elected were: Jana Sims, president; Willa Patterson, first vice-president; Paula Clifton, second vice-president; Elsie White, secretary; Roy Zubers, treasurer; Allen Alcorn and Blanch Ward, members-at-large.

□ Federationists may recall a Monitor Miniature in the March 1979 issue of the *Monitor* dealing with Ernest Ward's taping service. Mr. Ward, an NFB member from Scottsdale, Arizona, often stays up nights taping the Larry King Show, which he then edits for commercials and the hourly news. We announced in March that these cleaned-up tapes were available for $3.50 post-paid. Recently, however, Mr. Ward wrote us saying that he has reduced the price to $3.25 each, or 2 for $6.00. To obtain these tapes, or for a program giving detailed descriptions of their subject matter, write to Ernest Ward, 6813 East Avalon Drive, Scottsdale, Arizona 85251.